

1 HOWARD B. GOLDS, Bar No. 112626  
howard.golds@bbklaw.com  
2 THOMAS M. O'CONNELL, Bar No. 298457  
thomas.oconnell@bbklaw.com  
3 BEST BEST & KRIEGER LLP  
3390 University Avenue, 5th Floor  
4 P.O. Box 1028  
Riverside, CA 92502  
5 Telephone: (951) 686-1450  
Facsimile: (951) 686-3083

6 ALEXANDER FRIEDMAN (AF2750)  
afriedman@brodyandassociates.com  
7 BRODY AND ASSOCIATES, LLC  
120 Post Road West  
8 Westport, CT 06880  
9 Telephone: (203) 454-0560  
Facsimile: (203) 454-0569

10 Attorneys for Defendant  
11 ATG ELECTRONICS, INC.

12 UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF NEW JERSEY  
14

15 MAXLITE, INC., a New Jersey  
16 Corporation, f/k/a SK AMERICA,  
INC., d/b/a MAXLITE,

17 Plaintiff,

18 v.

19 ATG ELECTRONICS, INC.,  
20 JAMES D. STEEDLY, SOPHIA C.  
GALLEHER, and MATTHEW KIM,

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

Case No. 2:15-CV-01116-JMV-JBC  
U.S.D.J.: Hon. John Michael Vazquez

DEFENDANT ATG ELECTRONICS,  
INC.'S BRIEF IN SUPPORT OF  
MOTION TO DISMISS THE AMENDED  
COMPLAINT FOR LACK OF  
PERSONAL JURISDICTION OR, IN  
THE ALTERNATIVE, MOTION TO  
TRANSFER

MOTION DAY: TBD

## TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. RELEVANT FACTUAL BACKGROUND .....	4
A. Jurisdictional Background Of ATG.....	4
B. Jurisdictional Background Of The Individual Defendants .....	6
C. Jurisdictional Background of MaxLite .....	8
III. PROCEDURAL BACKGROUND .....	9
IV. LEGAL ARGUMENT .....	10
A. The Court Should Not Exercise Personal Jurisdiction Over ATG .....	10
1. General Jurisdiction Over ATG Is Not Proper Because ATG Is Not “At Home” In New Jersey .....	11
2. Specific Jurisdiction Over ATG Is Not Proper Because ATG Lacks The Requisite Minimum Contacts With New Jersey .....	12
a. MaxLite Cannot Show That ATG’s Activities Have Been Purposefully Directed At New Jersey .....	13
b. MaxLite Cannot Show That Its Claims Arise Out Of ATG’s Incidental Contacts With New Jersey .....	18
c. It Would Be Unreasonable To Exercise Specific Jurisdiction Over ATG In New Jersey .....	22
B. Alternatively, The Court Should Transfer This Case To The Central District Of California .....	24
1. This Lawsuit Could Have Been Brought In The Central District Of California.....	25
2. Private Interest Factors Warrant Transfer To The Central District Of California.....	26
3. Public Interests Factors Warrant Transfer To The Central District Of California.....	28
V. CONCLUSION .....	30

## TABLE OF AUTHORITIES

**Page(s)**

### **Federal Cases**

<i>Beth Schiffer Fine Photographic Arts, Inc. v. Colex Imaging, Inc.</i> No. 10-cv-5321, 2014 U.S. Dist. LEXIS 65338 (D.N.J. May 13, 2014) .....	15, 19, 20, 21
<i>Burger King Corp. v. Rudzewicz</i> 471 U.S. 462 (1985) .....	13, 23
<i>Calder v. Jones</i> 465 U.S. 783 (1984) .....	15, 16, 17
<i>Compagnie Des Bauxites de Guinee v. L'Union Atlantique S.A.</i> <i>D'Assurances</i> 723 F.2d 357 (3d Cir. 1983) .....	13
<i>Daimler AG v. Bauman</i> 134 S. Ct. 746 (2014) .....	12
<i>Dayhoff Inc. v. H.J. Heinz Co.</i> 86 F.3d 1287 (3d Cir. 1996) .....	15, 20, 21, 22
<i>E.I. DuPont de Nemours &amp; Co. v. Rhone Poulenc Fiber &amp; Resin</i> <i>Intermediates, S.A.S.</i> 269 F.3d 187 (3d Cir. 2001) .....	20
<i>First Options of Chicago, Inc. v. Kaplan</i> 115 S.Ct. 1920 (1995) .....	20
<i>Giangola v. Walt Disney World Co.</i> 753 F. Supp. 148 (D.N.J. 1990).....	12
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> 131 S.Ct. 2846 (2011) .....	11
<i>Hanson v. Denckla</i> 357 U.S. 235 (1958) .....	13
<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> 466 U.S. 408 (1984) .....	10, 11, 18

1	<i>Hudson United Bank v. Chase Manhattan Bank, NA</i>	
2	832 F. Supp. 881 (D.N.J. 1993).....	29
3	<i>IMO Indus., Inc. v. Kiekert AG</i>	
4	155 F.3d 254 (3d Cir. 1989) .....	17
5	<i>Int’l Shoe Co. v. Washington</i>	
6	326 U.S. 310 (1945) .....	10, 23
7	<i>Kaplan v. First Options of Chicago, Inc.</i>	
8	19 F.3d 1503 (3d Cir. 1994) .....	20
9	<i>Lony v. E. I. Du Pont de Nemours &amp; Co.</i>	
10	886 F.2d 628 (3d Cir. 1989) .....	28
11	<i>Newcomb v. Daniels, Saltz, Mongeluzzi, &amp; Barrett</i>	
12	847 F. Supp. 1244 (D.N.J. 1994).....	26
13	<i>O’Connor v. Sandy Lane Hotel Co.</i>	
14	496 F.3d 312 (3d Cir. 2007) .....	10, 12, 13, 18, 19
15	<i>Osteotech, Inc. v. GenSci Regeneration Sciences</i>	
16	6 F.Supp.2d 349 (D.N.J. 1998).....	12
17	<i>Peterson v. HVM LLC</i>	
18	No. 14-1137, 2016 U.S. Dist. LEXIS 27964 (D.N.J. Mar. 3, 2016).....	10
19	<i>Provident Nat’l Bank v. California Fed. Sav. &amp; Loan Ass’n.</i>	
20	819 F.2d 434 (3d Cir. 1987) .....	10
21	<i>Radian Guaranty Inc. v. Bolen</i>	
22	18 F.Supp.3d 635 (E.D.Pa. 2014).....	15, 16, 17, 22
23	<i>Rappoport v. Steven Spielberg, Inc.</i>	
24	16 F. Supp. 2d 481 (D.N.J. 1998).....	25, 26, 27, 28
25	<i>Ricoh Co. v. Honeywell, Inc.</i>	
26	817 F. Supp. 473 (D.N.J. 1993).....	25, 26
27	<i>Van Dusen v. Barrack</i>	
28	376 U.S. 612 (1964) .....	24
	<i>Walden v. Fiore</i>	
	134 S.Ct. 1115 (2014) .....	10, 12, 14, 15, 16

1	<b>Federal Statutes</b>	
2	28 U.S.C. § 1404(a) .....	24, 26
3	28 U.S.C. § 1406(a) .....	24
4		
5	<b>State Statutes</b>	
6	California Business and Professions Code § 16600 .....	26, 29
7	<b>Rules</b>	
8	Fed. R. Civ. P. 4(k) .....	10
9	<b>Constitutional Provisions</b>	
10	Fourteenth Amendment .....	10
11	<b>Other Authorities</b>	
12	LEDINSIDE,	
13	<a href="http://www.ledinside.com/news/2015/12/maxlite_files_lawsuit_aga">http://www.ledinside.com/news/2015/12/maxlite_files_lawsuit_aga</a>	
14	inst_atg_electronics_and_others (last visited April 6, 2016) .....	1
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## MEMORANDUM OF LAW

### I. INTRODUCTION

This action arises out of a California corporation, ATG Electronics, Inc.’s (“ATG”), decision to hire two California residents and one Georgia resident who were employees of MaxLite, Inc. (“MaxLite”), a corporation with a significant presence in California. Indeed, the undisputed facts demonstrate that most of the evidence and witnesses related to MaxLite’s allegations against ATG are located at either MaxLite’s West Coast office located in Anaheim, California, or ATG’s principal place of business located in Rancho Cucamonga, California. Rather than consolidate this action with the stayed action in the Central District of California and allow the parties to begin addressing the merits of this dispute, MaxLite has spent the last year vigorously<sup>1</sup> pursuing any evidence that might dissuade this Court from finalizing its April 2015 ruling that ATG lacks the minimum contacts necessary for the Court to retain personal jurisdiction. ATG is a small but emerging competitor with *de minimis* contacts with New Jersey. By forcing ATG to unnecessarily defend this action 2,400 miles away from its “home,” MaxLite is smothering its competitor with costs. This is a fundamental abuse of process.

---

<sup>1</sup> On December 2, 2015—ten months after MaxLite filed its lawsuit against ATG—MaxLite chose to submit a press release announcing its lawsuit against ATG stating that it was “committed to the vigorous protection of its intellectual property and enforcement of its proprietary rights” and that “[w]hether it involves ATG, or any other company or individual, we will not tolerate violates of our Proprietary Information Agreements, IP rights or trade secrets.” LEDINSIDE, [http://www.ledinside.com/news/2015/12/maxlite\\_files\\_lawsuit\\_against\\_atg\\_electronics\\_and\\_others](http://www.ledinside.com/news/2015/12/maxlite_files_lawsuit_against_atg_electronics_and_others) (last visited April 6, 2016).

1 Nevertheless, ATG has endured, and now MaxLite's efforts have only confirmed  
2 that ATG's incidental contacts with New Jersey do not merit the Court's exercise of  
3 general or specific jurisdiction.  
4

5 First, this Court should not exercise general jurisdiction over ATG. A court's  
6 finding of general jurisdiction is only merited where a defendant's contacts are  
7 continuous and systematic. ATG is incorporated in the State of California and its  
8 principal place of business is in Rancho Cucamonga, California. Moreover, ATG  
9 has never maintained an office or other place of business in New Jersey, registered  
10 to do business in New Jersey, paid taxes in New Jersey, maintained bank accounts  
11 in New Jersey, or had any employees in New Jersey. These indisputable facts  
12 demonstrate that ATG does not have the continuous and systematic contacts with  
13 New Jersey necessary for the Court to find that general jurisdiction is proper.  
14

15 Second, this Court should not exercise limited or specific jurisdiction over  
16 ATG. For specific jurisdiction to be proper, the court must find that the nonresident  
17 defendant has the "minimum contacts" with the forum. In considering whether  
18 minimum contacts exist, the plaintiff must show that the nonresident defendant has  
19 (i) "purposefully availed" itself of the benefits of the forum state *and* (ii) that its  
20 claims against the nonresident defendant arise out of or relate to the nonresident  
21 defendant's contacts with the forum.  
22

23 Here, after a year of jurisdictional discovery, the only connections MaxLite  
24 has been able to establish between ATG and New Jersey are: (i) advertising in  
25  
26  
27  
28

1 nationally circulated email promotions and magazines which reach New Jersey; (ii)  
2 participating in one trade show in Atlantic City in 2014; (iii) making sales to  
3 customers in New Jersey over a four year period that amount to less than half of  
4 one percent of ATG's total revenue from customers in the United States; and (iv)  
5 hiring three employees who did not work or reside in New Jersey but whose non-  
6 compete agreement mentioned New Jersey. These contacts were either the  
7 byproduct of a larger national and international marketing and sales development  
8 strategy that incidentally touch New Jersey or the result of a forum selection clause  
9 in an agreement to which ATG was not a party. Thus, these *de minimis* contacts  
10 with New Jersey do not demonstrate that ATG has purposefully availed itself of the  
11 State's benefits.

12  
13 In addition, these incidental contacts with New Jersey do not relate to  
14 MaxLite's claims. MaxLite alleges that ATG tortiously interfered with certain of  
15 its contracts and converted proprietary information. Even if these allegations were  
16 true (which they are not), MaxLite has never asserted that these actions took place  
17 in New Jersey. Rather, the undisputed facts demonstrate that even if all of  
18 MaxLite's allegations were true, these actions must have occurred in either  
19 California, ATG's base of operations, or Georgia, the only state other than  
20 California where an Individual Defendant resided during their time at ATG.  
21 Therefore, even after a year of jurisdictional discovery, MaxLite cannot  
22 demonstrate that it would be appropriate for the Court to exercise specific or limited



1 jurisdiction because ATG did not purposefully avail itself of the benefits of New  
2 Jersey *and* MaxLite's claims against ATG do not arise out of or relate to ATG's  
3 contacts with New Jersey.  
4

5 Third, if the Court does not grant ATG's Motion to Dismiss for lack of  
6 personal jurisdiction, in the alternative, this action should be transferred to the  
7 Central District of California and consolidated with the related action that is already  
8 pending in that court. Such a result is appropriate because: (i) the parties all have  
9 substantial connections to that forum; (ii) the defense of this action in New Jersey  
10 places an inordinate burden on ATG, especially as compared to the burden on  
11 MaxLite, a bi-coastal corporation with a West Coast office in the Central District;  
12 (iii) the convenience of the witnesses, the majority of whom are located in  
13 California; (iv) the availability of evidence, which is also overwhelmingly located  
14 in the Central District; and (v) the interest of justice in resolving this dispute  
15 economically and efficiently for all involved.  
16  
17  
18  
19

20 For all of the reasons set forth herein, ATG respectfully requests that the  
21 Court end MaxLite's attempt to force ATG to defend this action in New Jersey and  
22 grant its Motion to Dismiss for lack of personal jurisdiction, or in the alternative,  
23 transfer this matter to the Central District of California.  
24  
25  
26  
27  
28

## II. RELEVANT FACTUAL BACKGROUND

### A. Jurisdictional Background Of ATG

ATG is an LED lighting manufacturing corporation that is, and always has been, incorporated in California. (Declaration of Eric Cai<sup>2</sup> (“Cai Decl.”), ¶ 3) ATG’s principal place of business and primary distribution center are both located in Rancho Cucamonga, California, within the jurisdiction of the Central District of California. (*Id.*) All of ATG’s principals are California residents. (*Id.* at ¶¶ 5-6.) All corporate records, minute books, financial documents, employee records, and operating materials are kept and maintained in ATG’s Rancho Cucamonga office. (*Id.* at ¶¶ 5-6.) All employees of ATG are located and live in California, and ATG’s employment and recruitment efforts are directed at residents of California, specifically, the area encompassed by the Central District of California. (*Id.* at ¶ 7.) In addition to ATG’s California headquarters, ATG operates two manufacturing factories in China. (*Id.* at ¶ 4; *see* Deposition of Nick Ni<sup>3</sup> (“Ni Depo.”), 217:2-5.)

---

<sup>2</sup> ATG previously submitted the declaration of Eric Cai as part of ATG’s Motion to Dismiss filed on March 12, 2015. (*See* Doc. No. 17-3.) For the Court’s convenience, ATG has attached a true and correct copy of the aforementioned declaration as **Exhibit A**.

<sup>3</sup> As part of MaxLite’s jurisdictional discovery, MaxLite choose to depose ATG’s corporate representative. ATG designated its president, Nick Ni, for that deposition. Mr. Ni’s deposition took place on October 2, 2015. For the Court’s convenience, ATG has attached a condensed, true and correct copy of the aforementioned deposition transcript as **Exhibit F**. Exhibits from this deposition have been omitted.

1 All ATG products ship from California, China, or in some instances, from a third-  
 2 party warehouse in North Carolina. (Cai Decl., ¶ 4.)

3  
 4 ATG does not have, and has never had, an office or other place of business in  
 5 New Jersey, employees located in New Jersey, bank accounts in New Jersey,  
 6 licenses to do business in New Jersey, or ownership or affiliation with any facilities  
 7 in New Jersey. (Cai Decl., ¶¶ 7-9; Ni Depo., 216:24-217:5, 202:2-16.) ATG  
 8 advertises and markets its products through national and worldwide efforts,  
 9 including participating in national and international tradeshows, advertising in  
 10 nationally circulated magazines and publications, maintaining a promotional  
 11 website, sending press releases, and utilizing worldwide email based promotions.  
 12 (Ni Depo., 49: 11-25, 81:10-15; Deposition of Sophia Galleher<sup>4</sup> (“Galleher Depo.”),  
 13 11-12, 21.) Relevant here, the only tradeshow that ATG attended in New Jersey  
 14 was Globalcon in 2014 because it was held in Atlantic City that year. (Ni Depo.,  
 15 178:1-16.) While marketing activities like this may incidentally occur in or reach  
 16 New Jersey, none of ATG’s marketing efforts specifically target New Jersey. (Ni  
 17 Depo., 49-52, 63, 76; Galleher Depo., 12:21-23.)

18  
 19 ATG’s products are sold through the efforts of both internal sales  
 20 representatives and a network of independent contractors, including external sales

---

21  
 22  
 23  
 24  
 25  
 26 <sup>4</sup> As part of MaxLite’s jurisdictional discovery, MaxLite chose to depose Ms.  
 27 Sophia Galleher. Ms. Galleher’s deposition took place on March 29, 2016. For the  
 28 Court’s convenience, ATG has attached a condensed, true and correct copy of the  
 aforementioned deposition transcript as **Exhibit G**. Exhibits from this deposition  
 have been omitted.

1 representatives, distributors, resellers, and energy service contractors. (*See* Ni  
2 Depo., 82:5-12; Galleher Depo., 92:23-93:4.) The internal sales representatives are  
3 employees of ATG who work from the headquarters in Rancho Cucamonga and  
4 answer calls for orders and target sales all over the nation as well as in foreign  
5 countries. (*See* Ni Depo., 82-87; Cai Decl., ¶ 7.) While sales representatives may  
6 occasionally informally divvy up territories in sales meetings and may derive the  
7 majority of their sales from certain states that they choose to target, they are not  
8 officially assigned to any regions or states and often cross market. (Ni Depo.,  
9 85:2-8, 131:4-9, & *see generally* pp. 83-98.)

13 The independent sales representatives are not on ATG's payroll or controlled  
14 by ATG. (Ni Depo., 81:225-82:2, 183:3-9.) Rather, they select their own  
15 territories for sales, do not report to ATG, and are paid through submitting orders  
16 and receiving commissions. (*Id.* at 82:19-83:2, 100:13-15, 132:4-7, 183:3-9.) As a  
17 result, ATG has no way of tracking the markets that the sales from independent  
18 contractors or resellers and distributors ultimately end up in. Their sales for ATG  
19 vary, with some making repeated sales over the span of years while others are less  
20 productive and do not produce many orders. (*Id.* at 82:19-24, 99:20-25, & *see*  
21 *generally* pp. 98-116.) Some sales representatives sell directly to customers who  
22 use the products, but many sales are made to purchasers who subsequently resell or  
23 distribute ATG's products through their own businesses and contacts. (*See* Ni  
24 Depo., 82:5-12; Galleher Depo., 92:23-93:4.)

Over the last four years, ATG sold approximately \$32 million of LED lights in the United States. (ATG's Resps. to MaxLite's First Set of Jurisdictional Interrogatories, Resp. to Interrogatory No. 3<sup>5</sup>.) Of the U.S. sales, total sales to New Jersey were \$146,041, or approximately 0.045% of ATG's total revenue. *Id.* ATG had no sales to New Jersey prior to 2011. *Id.* ATG affirmatively stopped selling products to customers in New Jersey as a result of this lawsuit. (Galleher Depo., 75:12-23.)

### **B. Jurisdictional Background Of The Individual Defendants**

With respect to Sophia Galleher ("Galleher"), Matthew Kim ("Kim"), and James Steedly ("Steedly") (collectively, "Individual Defendants"), none of them either worked or resided in New Jersey during the relevant time period. Galleher and Steedly both worked and resided in California, while Kim worked remotely and resided in Georgia. (Declaration of Sophia Galleher<sup>6</sup> ("Galleher Decl."), ¶ 3; Declaration of Matthew Kim<sup>7</sup> ("Kim Decl."), ¶ 3; Declaration of James Steedly<sup>8</sup>

---

<sup>5</sup> As part of MaxLite's jurisdictional discovery, MaxLite submitted interrogatories to ATG on July 1, 2015. ATG submitted its responses to MaxLite's interrogatories on August 19, 2015. For the Court's convenience, ATG has attached a true and correct copy of the aforementioned discovery responses as **Exhibit E**.

<sup>6</sup> ATG previously submitted the declaration of Sophia Galleher as part of ATG's Motion to Dismiss filed on March 12, 2015. (*See* Doc. No. 17-4.) For the Court's convenience, ATG has attached a true and correct copy of the aforementioned declaration as **Exhibit B**.

<sup>7</sup> ATG previously submitted the declaration of Matthew Kim as part of ATG's Motion to Dismiss filed on March 12, 2015. (*See* Doc. No. 17-5.) For the Court's

1 (“Steadly Decl.”), ¶ 3.) All communications between the Individual Defendants  
 2 and ATG occurred outside of New Jersey, with most communications occurring in  
 3 California. Each Individual Defendant was hired to work for ATG, either in  
 4 California or with work activities directed at California. (Galleher Decl., ¶ 12; Kim  
 5 Decl., ¶ 16; Steedly Decl., ¶ 19.) During the Individual Defendants’ employment  
 6 with ATG, no business contacts or relationships with New Jersey existed or were  
 7 developed. (Galleher Decl., ¶ 14; Kim Decl., ¶ 16; Steedly Decl., ¶ 19.)

10 While Galleher worked at ATG, she served as the company’s Director of  
 11 Sales and Marketing. (Galleher Decl., ¶ 12.) Galleher was in charge of  
 12 restructuring the ATG sales force and building a marketing department for the  
 13 company. (*Id.*) All of Galleher’s work was based out of California. (*Id.*)

16 While Steedly worked at ATG, he served as the company’s Vice President of  
 17 Special Projects. (Steadly Decl., ¶ 18.) Steedly worked from California throughout  
 18 the entire time of his employment and maintained no personal or business  
 19 relationships with anyone in New Jersey. (*Id.* at ¶ 19.)

23  
 24 convenience, ATG has attached a true and correct copy of the aforementioned  
 25 declaration as **Exhibit C**.

26 <sup>8</sup> ATG previously submitted the declaration of James Steedly as part of ATG’s  
 27 Motion to Dismiss filed on March 12, 2015. (*See* Doc. No. 17-6.) For the Court’s  
 28 convenience, ATG has attached a true and correct copy of the aforementioned  
 declaration as **Exhibit D**.

1 While Kim worked at ATG, he served as the company's Vice President of  
 2 Business Development. (Kim Decl., ¶ 15.) All of Kim's work was directed at the  
 3 California region. (*Id.* at ¶ 16.) Although Kim maintained accounts throughout the  
 4 country, he did not have any in New Jersey. (*Id.*) He never did any business in  
 5 New Jersey or was otherwise physically present in New Jersey at any time while he  
 6 was employed by ATG. (*Id.*)

### 10 C. Jurisdictional Background of MaxLite

12 MaxLite has two primary offices—an East Coast office in New Jersey, and a  
 13 West Coast office in California. (Galleher Decl., ¶ 23.) The West Coast office has  
 14 been in California for almost ten years and is currently located in Anaheim. (*Id.* at  
 15 ¶ 6.) A substantial portion of MaxLite's sales, product development, product  
 16 testing and certification, and warehousing and distribution efforts are generated  
 17 from its West Coast office. (Cai Decl., ¶ 15.) MaxLite employs several employees  
 18 at its West Coast office, many of whom are knowledgeable about the facts of this  
 19 dispute and will likely be called as witnesses in this case. (*Id.*) Further, each of the  
 20 members of MaxLite's executive team travel to the West Coast office and have  
 21 spent significant time there in the recent past. (Galleher Decl., ¶ 20.) Several key  
 22 MaxLite executives, directors, and managers, including, but not limited to, Jay Lee  
 23 (General Manager for the Western Office), Pat Treadway (Director of Product  
 24 Management), David Wyatt (Vice President of Sales, Western United States), and

1 MaxLite's Manager of Product Certifications, actually reside in the Central District  
2 of California and work full-time at MaxLite's West Coast office. (*Id.* at ¶ 22.)  
3  
4 Again, all of these individuals have knowledge of facts relevant to this dispute and  
5 are likely to be called as witnesses in this action. (*Id.*) MaxLite's connections to  
6 California are so substantial that the company's annual meeting for all of MaxLite's  
7 key stakeholders was held in California in 2015. (*Id.* at ¶ 21.)  
8  
9

### 10 **III. PROCEDURAL BACKGROUND**

11  
12 MaxLite filed its Complaint in this matter with the District of New Jersey on  
13 February 12, 2015. (Doc. No. 1.) Without notice of, or service in, MaxLite's  
14 action, ATG and the Individual Defendants filed their own Complaint challenging  
15 the non-compete agreements just one day later, on February 13, 2015, in the  
16 Superior Court of California, County of Orange. (*ATG Electronics, Inc., et al. v.*  
17 *MaxLite, Inc., et al.*, Case No. 30-2015-00771894-CU-OE-CJC.) That action was  
18 subsequently removed to the Central District of California by MaxLite. (Case No.  
19 8:15-cv-00365-JVS-RNB.) The California proceeding was stayed on March 19,  
20 2015, pending resolution of the jurisdictional issue in this matter. (Central Dist.  
21 Doc. No. 12.)  
22  
23  
24

25 ATG and the Individual Defendants jointly filed their initial Motion to  
26 Dismiss for lack of jurisdiction with this Court on March 12, 2015. (Doc. No. 17.)  
27  
28



1 MaxLite filed its Opposition to the Motion on March 23, 2015. (Doc. No. 20.) The  
2 Defendants filed their Reply Brief on April 13, 2015. (Doc. No. 37.)

3  
4 The Motion to Dismiss came before this Court on April 21, 2015, and was  
5 heard by the Honorable Susan D. Wigenton. The Court issued its Order on the  
6 Motion to Dismiss on April 29, 2015. Therein, Judge Wigenton denied the Motion  
7 to Dismiss with respect to the Individual Defendants; however, with respect to  
8 ATG, the Court found that “Plaintiff has not presented sufficient evidence to meet  
9 its burden of showing that Defendant ATG has contacts with the State of New  
10 Jersey sufficient for this Court to exercise *in personam* jurisdiction over ATG.”  
11 (Doc. No. 62.)

12  
13 Giving MaxLite one last chance to demonstrate to the Court that ATG has  
14 sufficient contacts with New Jersey, the Court held its ruling as to ATG in abeyance  
15 and allowed limited jurisdictional discovery. Specifically, the Court granted the  
16 parties each the right to propound seven written interrogatories, 10 requests for  
17 production of documents, and 10 requests for admissions. (Doc. No. 84.) The  
18 Court also allowed each party to take two depositions. (*Id.*) Since the previous  
19 Motion to Dismiss, MaxLite and ATG have propounded written discovery and  
20 MaxLite has taken the deposition of ATG, through its President Nick Ni, and  
21 Individual Defendant Sophia Galleher. While this discovery has been ongoing, the  
22 Central District of California action has been stayed. (Central Dist. Doc. No. 12.)  
23  
24  
25  
26  
27  
28

1 **IV. LEGAL ARGUMENT**

2 **A. The Court Should Not Exercise Personal Jurisdiction Over ATG**

3  
4 The Due Process Clause of the Fourteenth Amendment restricts a federal  
5 district court from asserting personal jurisdiction over a nonresident defendant who  
6 does not have certain “minimum contacts” with the forum state such that the  
7 exercise of personal jurisdiction comports with the “traditional notions of fair play  
8 and substantial justice.” *Provident Nat’l Bank v. California Fed. Sav. & Loan*  
9 *Ass’n.*, 819 F.2d 434, 437 (3d Cir. 1987) (quoting *Int’l Shoe Co. v. Washington*, 326  
10 U.S. 310, 316 (1945)). Moreover, a federal district court may only exercise personal  
11 jurisdiction over a nonresident defendant to the extent authorized by the law of that  
12 state. Fed. R. Civ. P. 4(k); *Walden v. Fiore*, 134 S.Ct. 1115, 1121 (2014).

13  
14 To comport with the standards of due process, it is well-settled that a Federal  
15 District Court sitting in New Jersey may only exercise personal jurisdiction over a  
16 nonresident defendant through one of two means: (1) general jurisdiction (i.e.,  
17 when the defendant’s activities in New Jersey are such that an exercise of personal  
18 jurisdiction over the defendant in this forum is proper as to all matters); or (2)  
19 specific jurisdiction (i.e., when the claim at issue directly arises out of the  
20 defendant’s contacts or conduct within New Jersey). *See Helicopteros Nacionales*  
21 *de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984); *O’Connor v. Sandy Lane*  
22 *Hotel Co.*, 496 F.3d 312, 317 (3d Cir. 2007); *Peterson v. HVM LLC*, No. 14-1137,  
23 2016 U.S. Dist. LEXIS 27964, \*9-10 (D.N.J. Mar. 3, 2016). Consequently, if a  
24  
25  
26  
27  
28

1 nonresident defendant raises a challenge to jurisdiction based on insufficient  
2 contacts with the forum, the burden of proof shifts to the plaintiff to show with  
3 “reasonable particularity” that either (1) the defendant has “continuous and  
4 systematic” contacts with the forum state (i.e., general jurisdiction); or (2) the  
5 particular cause of action sued upon arises from the defendant’s activities within the  
6 forum state (i.e., specific jurisdiction). *Helicopteros*, 466 U.S. at 416.

9       Shortly after MaxLite filed its Complaint against ATG, ATG challenged  
10 MaxLite’s efforts to force ATG to defend itself in New Jersey. In April of 2015,  
11 this Court found that “Plaintiff has not presented sufficient evidence to meet its  
12 burden of showing that Defendant ATG has contacts with the State of New Jersey  
13 sufficient for this Court to exercise *in personam* jurisdiction over ATG.” (Doc. No.  
14 62.) Rather than immediately dismiss ATG from this action, the Court graciously  
15 gave MaxLite the opportunity to conduct discovery and demonstrate that the  
16 Court’s finding was in error. Now, after nearly a year, MaxLite still cannot satisfy  
17 its burden of proving that the Court should exercise personal jurisdiction over ATG  
18 under either a general or specific jurisdiction analysis. This is because, simply  
19 stated, all MaxLite’s discovery has done is confirm that ATG’s contacts with New  
20 Jersey are, at best, incidental. Accordingly, ATG lacks the minimum contacts  
21 necessary for the Court to exercise personal jurisdiction.  
22  
23  
24  
25  
26  
27  
28

1                   **1.     General Jurisdiction Over ATG Is Not Proper Because ATG**  
2   **Is Not “At Home” In New Jersey**

3  
4           A court may only assert general jurisdiction over a defendant if that  
5 defendant’s contacts with the forum state are sufficiently “continuous and  
6 systematic” so as to render it essentially “at home” in the forum. *Goodyear Dunlop*  
7 *Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011). Because general  
8 jurisdiction subjects a defendant to the court’s authority for *any* claim, even if  
9 unrelated to the defendant’s activities in the forum, this is a “rigorous burden [that]  
10 ensures the fairness of treating a non-resident identically to a resident in terms of  
11 amenability to suit in the jurisdiction.” *Giangola v. Walt Disney World Co.*, 753 F.  
12 Supp. 148, 154 (D.N.J. 1990). A corporate defendant is regarded as “at home,” and  
13 thus subject to general jurisdiction, in the state where the business is incorporated  
14 and where the corporation maintains its principal place of business. *Daimler AG v.*  
15 *Bauman*, 134 S. Ct. 746, 760 (2014).

16  
17           MaxLite’s Amended Complaint fails to present even a colorable contention  
18 that ATG is subject to general jurisdiction in New Jersey. The Amended Complaint  
19 acknowledges that ATG “is a California corporation with its principal place of  
20 business...[in] Rancho Cucamonga, California.” (Am. Compl., ¶ 6.) The  
21 Amended Complaint proffers no evidence that would support the finding that ATG  
22 engages in a continuous and systematic course of business in New Jersey such that  
23 it would be proper to treat ATG identically to a resident for the purpose of  
24  
25  
26  
27  
28

jurisdiction. Indeed, this is because ATG has never maintained an office or other place of business in New Jersey, registered to do business in New Jersey, paid taxes in New Jersey, maintained bank accounts in New Jersey, or had any employees in New Jersey. Consequently, the Court should not exercise general jurisdiction over ATG.

**2. Specific Jurisdiction Over ATG Is Not Proper Because ATG Lacks The Requisite Minimum Contacts With New Jersey**

In the absence of a basis for general jurisdiction, the court may only subject a nonresident defendant to limited or specific jurisdiction in a given forum where the plaintiff's claims arise directly from the defendant's contacts or actions in the forum state. *See Walden*, 134 S.Ct. at 1121; *Osteotech, Inc. v. GenSci Regeneration Sciences*, 6 F.Supp.2d 349, 354 (D.N.J. 1998). To make this determination, the Third Circuit applies a three-part "minimum contacts" test. *O'Connor*, 496 F.3d at 317. The test requires courts to consider: (1) whether the defendant purposefully directed its activities at the forum; (2) whether the litigation arises out of or relates to those forum activities; and (3) if the prior two requirements are met, whether the exercise of jurisdiction otherwise comports with fair play and substantial justice. *Id.*

The plaintiff bears the burden on the first two prongs of this test. *See Compagnie Des Bauxites de Guinee v. L'Union Atlantique S.A. D'Assurances*, 723

1 F.2d 357, 362 (3d Cir. 1983). Only once a plaintiff proves that the defendant has  
 2 the requisite minimum contacts with the forum does the burden shift to the  
 3 defendant to present a “a compelling case that the presence of some other  
 4 considerations would render jurisdiction unreasonable.” *Burger King Corp. v.*  
 5 *Rudzewicz*, 471 U.S. 462, 477 (1985); *Hanson v. Denckla*, 357 U.S. 235, 251  
 6 (1958) (“Minimal contacts’... are a prerequisite to [the] exercise of power over [the  
 7 defendant].”). As set forth below, MaxLite cannot show ATG has the minimum  
 8 contacts with New Jersey necessary for the Court to exercise specific jurisdiction,  
 9 but ATG can present numerous reasons why the Court’s exercise of specific  
 10 jurisdiction would be unreasonable.

11  
 12  
 13  
 14  
 15  
 16 a. MaxLite Cannot Show That ATG’s Activities Have Been  
 17 Purposefully Directed At New Jersey

18  
 19 A plaintiff requesting that the court assert specific jurisdiction over a  
 20 nonresident defendant must first demonstrate that the defendant purposefully  
 21 directed activities at the forum. *Burger King*, 471 U.S. at 472. This requirement  
 22 ensures that jurisdiction is foreseeable in the forum and that a nonresident will not  
 23 be haled into court solely as the result of “random, fortuitous, or attenuated”  
 24 contacts. *Id.* at 475. ATG’s contacts with New Jersey can be broken into two  
 25 categories: (i) the byproduct of its national marketing and sales strategy and (ii) the  
 26 individual defendants’ non-compete agreements. Neither of these contacts are  
 27  
 28

1 sufficient for this Court to exercise specific jurisdiction over ATG.

2 First, ATG's contacts with New Jersey through its national marketing and  
3 sales strategy were *de minimis*. As stated above, ATG advertises and markets its  
4 products through international, national, and sometimes regional efforts. These  
5 efforts include advertising in nationally circulated magazines and publications,  
6 maintaining a promotional website, sending press releases, and utilizing worldwide  
7 email based promotions, none of which specifically target New Jersey. These  
8 efforts may also include attendance at international or national trade shows where,  
9 incidentally, potential customers from New Jersey may attend. On one occasion,  
10 these efforts even included ATG's attendance at an international trade show the  
11 year it was held in Atlantic City, New Jersey. The combination of these efforts  
12 naturally results in sales to customers in New Jersey. However, over the last four  
13 years, ATG's total sales to New Jersey were \$146,041, or approximately 0.045% of  
14 ATG's total revenue. In sum, ATG's national marketing efforts and its *de minimis*  
15 sales demonstrate that ATG's contacts with New Jersey have been nothing more  
16 than random, fortuitous, and much too attenuated for the Court to find that ATG has  
17 purposefully directed its activities in this forum.

18 Second, ATG's contacts with New Jersey through the individual defendants'  
19 non-compete agreements is also too attenuated for the Court to find that ATG  
20 purposefully directed its activities at the forum. To demonstrate that a nonresident  
21 defendant has the requisite minimum contacts, the plaintiff must demonstrate that  
22  
23  
24  
25  
26  
27  
28

jurisdiction is based on contacts that the defendant itself establishes with the forum, and those contacts must in fact be with the forum and not just with the plaintiff or other persons who happen to reside in the forum. *Walden*, 134 S.Ct. at 1122 (“The plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.”). Relevant case law<sup>9</sup> demonstrates that MaxLite cannot make this showing.

For instance, the similarities between *Walden* and this matter show that ATG’s decision to hire the Individual Defendants is not enough for the Court to exercise personal jurisdiction. *Walden* involved the tortious withholding of plaintiffs’ money in Georgia while they were traveling home to Nevada. *Id.* at 1120. After considering the defendant’s lack of contacts with the forum, the Supreme Court clarified its prior holding in *Calder v. Jones*, 465 U.S. 783 (1984)<sup>10</sup>

---

<sup>9</sup> United States Magistrate Judge Steve Mannion asked the parties to address four cases in this motion with respect to specific jurisdiction. Those cases are:

1. *Walden v. Fiore*, 134 S.Ct. 1115, 1121 (2014);
2. *Radian Guaranty Inc. v. Bolen*, 18 F.Supp.3d 635 (E.D.Pa. 2014);
3. *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287 (3d Cir. 1996); and
4. *Beth Schiffer Fine Photographic Arts, Inc. v. Colex Imaging, Inc.*, No. 10-cv-5321, 2014 U.S. Dist. LEXIS 65338 (D.N.J. May 13, 2014).

<sup>10</sup> *Calder* dealt with a libel claim against the National Inquirer magazine. *Walden*, 134 S.Ct. at 1123. There, the Supreme Court found that the defendant’s use of California contacts to draft a story about a California resident that was then broadly published and circulated in California where it was read by thousands of other California residents showed that the conduct was tethered to the forum apart from



1 and found there was no basis for jurisdiction arising from the effects felt in the  
2 forum. *Walden*, 134 S.Ct. at 1124. Specifically, the *Walden* Court held that “a  
3 defendant’s relationship with a plaintiff or third party, standing alone, is an  
4 insufficient basis for jurisdiction.” *Walden*, 134 S.Ct. at 1123. The Supreme Court  
5 stated that to permit jurisdiction under such circumstances “impermissibly allows a  
6 plaintiff’s contacts with the defendant and forum to drive the jurisdictional  
7 analysis.” *Walden*, 134 S.Ct. at 1125. Moreover, the Supreme Court stated that it  
8 is not plaintiff’s contacts with the forum that are decisive to a jurisdictional  
9 analysis—“[t]he proper question is not where the plaintiff experienced a particular  
10 injury or effect but whether the defendant’s conduct connects him to the forum in a  
11 meaningful way.” *Id.* Therefore, the *Walden* Court found that the defendant lacked  
12 contacts with Nevada because his conduct was only directed at the plaintiffs, only  
13 caused happenstance effects in the forum, and that defendant’s conduct was not tied  
14 to the forum in a meaningful way. *Id.* at 1125.

15  
16  
17  
18  
19  
20 The findings of *Walden* are applicable to this matter. Here, ATG hired the  
21 three Individual Defendants. As stated above, ATG is located in California and has  
22 *de minimis* contacts with New Jersey. Moreover, none of the three Individual  
23 Defendants worked or resided in New Jersey at the time they were recruited, hired,  
24 or worked at ATG. Nevertheless, MaxLite will claim that ATG’s choice to hire the  
25  
26  
27 the connection to the plaintiff. *Walden*, 134 S.Ct. at 1123-1124. Thus, the  
28 Supreme Court determined jurisdiction was proper based on the effects felt in  
California, largely because of the nature of the tort of libel. *Id.* at 1123-1124.

1 Individual Defendants affected MaxLite in New Jersey. The fact is, it did so solely  
2 because that is where MaxLite is incorporated.<sup>11</sup> However, as shown in *Walden*,  
3 this would be improper. This would impermissibly allow MaxLite to drive the  
4 jurisdictional analysis through its own contacts with New Jersey—not ATG’s or the  
5 Individual Defendants. *Walden*, 134 S.Ct. at 1125. Moreover, hiring the Individual  
6 Defendants—even with their non-compete agreements—does not connect ATG to  
7 New Jersey in a meaningful way. Therefore, ATG’s decision to hire the  
8 Individual Defendants does not support a finding of special jurisdiction because  
9 that conduct was directed at the Individual Defendants in other forums, the effects  
10 of which were tangentially felt by MaxLite in New Jersey in an inconsequential  
11 way.

12 Under a similar analysis, the United States District Court for the Eastern  
13 District of Pennsylvania determined that an emerging competitor’s decision to hire  
14 an employee with a forum selection clause in its non-compete agreement was  
15 insufficient to establish specific jurisdiction. *Radian Guar., Inc. v. Bolen*, 18  
16 F.Supp.3d 635, 644 (E.D.Pa. 2014). There, the District Court applied the *Calder*  
17 effects test which states that specific jurisdiction is established where the plaintiff  
18 shows: (1) that defendant committed an intentional tort; (2) the plaintiff felt the  
19 “brunt of the harm” in the forum; and (3) the defendant’s conduct was expressly  
20

---

21 <sup>11</sup> The effects were entirely independent of the forum and would have been felt in  
22 any forum where MaxLite did business, including its West Coast office in  
23 California where two of the Individual Defendants worked.

1 aimed at the forum. *Id.* at p. 644; *IMO Indus., Inc. v. Kiekert AG*, 155 F.3d 254,  
2 256 (3d Cir. 1989). It is this third requirement that “is critical to the effects test.”  
3  
4 *Radian*, 18 F.Supp.3d at 644. It is not enough that a defendant targets behavior at a  
5 plaintiff that it knows is located in the forum; “[t]he defendant must manifest  
6 behavior intentionally targeted at and focused on the forum for *Calder* to be  
7 satisfied.” *Id.* (quoting *IMO Indus.*, 155 F.3d at 265). Applying this rationale, the  
8 *Radian* Court stated that mere knowledge that the employer was headquartered in a  
9 state and would thereby feel the effects of the conduct in that state was “insufficient  
10 to meet the ‘expressly aimed’ standard.” *Id.* at 645. As a result, the *Radian* Court  
11 found the employment relationship was not tied to the forum at issue, and thus,  
12 jurisdiction was improper because the defendants had neither met with nor recruited  
13 the employee in the forum state and had hired her to work in another state and serve  
14 customers in another region. *Id.*

15  
16 Like the plaintiff in *Radian*, MaxLite cannot satisfy the *Calder* effects test.  
17  
18 MaxLite cannot identify any of ATG’s alleged tortious conduct that was expressly  
19 aimed at New Jersey. Like *Radian*, ATG’s mere knowledge that MaxLite was  
20 headquartered in New Jersey and may tangentially feel the effects of hiring the  
21 Individual Defendants does not satisfy the “expressly aimed” standard. *Id.* at 645.  
22  
23 Moreover, all of the facts surrounding ATG’s employment relationship with the  
24 Individual Defendants show that the employment relationship was not focused on  
25 New Jersey. Those facts include that ATG neither met with nor recruited the  
26  
27  
28

1 Individual Defendants in New Jersey and that the Individual Defendants were not  
 2 hired to work in New Jersey or to serve a New Jersey market. Thus, like *Radian*,  
 3 ATG’s decision to hire the Individual Defendants is not sufficiently aimed at New  
 4 Jersey and, as such, MaxLite cannot satisfy the *Calder* effects test.

6 In sum, ATG’s *de minimis* incidental contacts with New Jersey are not  
 7 enough for MaxLite to prove that ATG purposefully directed activities at New  
 8 Jersey. Consequently, MaxLite cannot satisfy the first prong of the minimum  
 9 contacts analysis and the Court should not exercise special jurisdiction over ATG.

12  
 13 b. MaxLite Cannot Show That Its Claims Arise Out Of  
 14 ATG’s Incidental Contacts With New Jersey

15  
 16 The second prong of the minimum contacts analysis requires the plaintiff to  
 17 show that its claims “arise out of or relate to” the activities of the nonresident  
 18 defendant in the forum state. *Helicopteros*, 466 U.S. at 414. Because the Supreme  
 19 Court has not clarified the degree of relatedness required, the Appellate Circuits  
 20 have adopted their own tests. *O’Connor*, 496 F.3d at 318. Relevant here, the Third  
 21 Circuit methodology begins with but-for causation, but then aims to avoid the risks  
 22 of over-inclusive findings of jurisdiction by looking to the reciprocity of the  
 23 specific contacts. *Id.* at 323. The relatedness prong is therefore intended to  
 24 maintain balance and to ensure that jurisdictional exposure is “closely tailored” to  
 25 ensure foreseeability. *Id.* Thus, the Third Circuit approach “requires a closer and  
 26  
 27  
 28

1 more direct causal connection” than that provided by but-for causation. *Id.* at 321,  
 2 323.

3  
 4 Here, MaxLite has asserted four causes of action against ATG in the  
 5 Amended Complaint.<sup>12</sup> In support of its claims, MaxLite alleges that ATG (i)  
 6 induced the Individual Defendants to breach their employment agreements; (ii)  
 7 interfered with unspecified contracts with MaxLite’s unspecified vendors,  
 8 suppliers, manufacturers, customers, sales representatives, and distributors in  
 9 unspecified locations; and (iii) lured away MaxLite’s unspecified customers that are  
 10 also located in unspecified locations. (Am. Compl., ¶¶ 111, 117, 122, 123, 127.)

13 Even taking MaxLite’s allegations as true, all of ATG’s alleged actions must  
 14 have occurred outside of New Jersey. ATG conducts its business in the United  
 15 States entirely from its office in Rancho Cucamonga, California. All contacts with  
 16 the Individual Defendants regarding their employment with ATG were conducted  
 17 while both the Individual Defendants and ATG were in California, with the  
 18 exception of Kim who communicated with ATG at various times from Arizona and  
 19 Georgia as well. (ATG’s Resps. to First Set of Jurisdictional Interrogatories, Resp.  
 20 to Interrogatory No. 2.) The Individual Defendants were hired by ATG to work in  
 21 California or with their work activities directed at California.

22  
 23  
 24  
 25  
 26  
 27  
 28  


---

<sup>12</sup> Specifically, those causes of action include: (i) tortious interference of contractual relationships, against all defendants; (ii) tortious interference of present and prospective business advantage, against all defendants; (iii) civil conspiracy, against all defendants; and (iv) for unjust enrichment, against ATG. (Am. Compl., ¶¶ 102-129.)

1           Moreover, MaxLite has never connected any of its allegations with New  
2           Jersey. In order to meet the Third Circuit's requirement for relatedness sufficient  
3           for jurisdiction in this forum, MaxLite must show an even closer and more direct  
4           causal connection than but-for causation between ATG's contacts with this forum  
5           and the resulting harm alleged. *See O'Connor*, 496 F.3d at 321, 323. MaxLite can  
6           only point to ATG's nationwide marketing efforts, participation in a trade show that  
7           happened to be held in Atlantic City, and sales to New Jersey customers amounting  
8           to 0.045% of the total sales. While these facts evidence limited contacts with New  
9           Jersey, they are in no way the but-for cause of MaxLite's alleged harm, and they do  
10          not make it foreseeable that ATG could be haled into this forum for these unrelated  
11          claims.

12          MaxLite's only hope to establish that ATG's actions were the but-for cause  
13          of MaxLite's alleged harm in New Jersey is to rely on the Individual Defendants'  
14          non-compete agreements. A third party may be held to an arbitration or forum  
15          selection clause agreed to by other parties when the alleged conduct of the non-  
16          party is so "closely related to the contractual relationship" that being bound is  
17          foreseeable. *Beth Schiffer Fine Photographic Arts, Inc. v. Colex Imaging, Inc.*, No.  
18          10-cv-5321, 2014 U.S. Dist. LEXIS 65338, \*9-10 (D.N.J. May 13, 2014).  
19          However, "The Third Circuit is reluctant to enforce a contractual clause against a  
20          non-party, unless 'accepted principles of agency or contract' make it appropriate."  
21          *Id.* at \*9 (quoting *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin*

1 *Intermediates, S.A.S.*, 269 F.3d 187, 194 (3d Cir. 2001); *see also Dayhoff Inc. v.*  
2 *H.J. Heinz Co.*, 86 F.3d 1287, 1296-1297.

3  
4 In *Dayhoff*, the Third Circuit considered the applicability of arbitration and  
5 forum selection clauses to non-parties accused of, among other things, tortious  
6 interference with various agreements between a United States distributor and an  
7 Italian candy business. 86 F.3d at 1293. Relying on Third Circuit precedent  
8 affirmed by the Supreme Court, the Third Circuit reversed the District Court's  
9 finding that the non-parties' conduct was "closely related to the contractual  
10 relationship" sufficient for the forum selection clause to apply to all defendants. *Id.*  
11 at 1295-1296 (citing *Kaplan v. First Options of Chicago, Inc.*, 19 F.3d 1503 (3d  
12 Cir. 1994) and *First Options of Chicago, Inc. v. Kaplan*, 115 S.Ct. 1920 (1995)).  
13 The court held that the agreements could only "be enforced by the signatories to  
14 those agreements." *Id.* at 1296. While the court suggested that a different outcome  
15 might result if the non-party to be bound were a beneficiary, agent, or employee of  
16 a consenting principal, under the circumstances presented where there was no  
17 agreement between the distributor and the confectioner's successor in interest,  
18 enforcement of the arbitration and forum selection clauses was rejected by the  
19 court. *Id.* at 1297.

20  
21 This Judicial District recently reached a similar conclusion and found that a  
22 forum selection clause was not enforceable against a non-party to the agreement.  
23  
24 *Beth Schiffer Fine Photographic Arts, Inc. v. Colex Imaging, Inc.*, No. 10-cv-5321,

1 2014 U.S. Dist. LEXIS 65338 (D.N.J. May 13, 2014.) In *Schiffer*, a New York  
 2 purchaser of a defective laser printer attempted to enforce a New Jersey forum  
 3 selection clause in its warranty agreement with the United States distributor for the  
 4 Italian-made printer. *Id.* at \*1-2, 9. Relying on authority from the Third Circuit,  
 5 this District held that the Italian company was not bound by the agreement. *Id.* at  
 6 \*8-9. In reaching its conclusion, the court noted that “[o]rdinarily, a party not a  
 7 signatory to a contract cannot be bound by terms of that contract.” *Id.* at \* 9.  
 8 However, the non-party may be bound only where it is a third party beneficiary or  
 9 closely related to the contractual relationship. *Id.* at \*10. Looking specifically at  
 10 when a party is sufficiently “closely related to the contractual relationship” that it is  
 11 foreseeable that the non-party will be bound by the contract as well, the court  
 12 declared, “[t]he ‘closely related’ exception is a narrow one.” *Schiffer*, 2014 U.S.  
 13 Dist. LEXIS 65338 at \*13.

14  
 15  
 16  
 17  
 18  
 19 Courts in this district typically find that non-signatories  
 20 are “closely related” only in the context of an individual  
 21 non-signatory who is employed by—or the principal of—  
 22 a corporate entity which is a signatory.  
 23  
 24

25 *Id.* (emphasis added). Under the circumstances, the court concluded that the  
 26 relationship between the Italian manufacturer and the United States Distributor did  
 27  
 28



1 not fall within the exception, and thus, the defendant was not bound by the forum  
2 selection clause. *Id.*

3  
4 Here, the conditions for the extraordinary application of a contractual  
5 provision to a party who neither signed nor consented to the provision in this  
6 District are not met. It is undisputed that ATG was not a signatory to the Individual  
7 Defendants' non-compete agreements. It is also undisputed that ATG is not a third  
8 party beneficiary of these agreements. Moreover, it is undisputed that ATG is not  
9 an agent or employee of MaxLite or any of the Individual Defendants. Thus,  
10 pursuant to *Schiffer* and *Dayhoff*, ATG is not closely related to the contractual  
11 relationships between MaxLite and the Individual Defendants. Therefore, the  
12 imposition of the Individual Defendants' non-compete agreements' forum selection  
13 clauses to ATG is impermissible.<sup>13</sup> Therefore, because MaxLite has not and/or  
14  
15  
16  
17

18 <sup>13</sup> MaxLite is likely to argue that the Eastern District of Pennsylvania in one case  
19 required a much more lenient analysis than either this District or the Third Circuit  
20 requires to find a sufficiently close relationship for jurisdiction over a non-party  
21 based on a forum selection clause. In *Radian* (also discussed above), the court  
22 found an alternative basis for jurisdiction over certain of the defendants because the  
23 court determined it was foreseeable that the defendants would be bound by the  
24 forum selection clause. According to the court, enforcing the forum selection  
25 clause was foreseeable because the non-party who hired the employee from a  
26 competitor received written notice from the employee that she had signed a  
27 restrictive covenant, reviewed the employment agreement, and recognized the risks  
28 of hiring the employee prior to doing so. *Id.* at 647. This finding by the Eastern  
District of Pennsylvania is an outlier that is not binding on this court. Indeed, this  
basis for determining foreseeability sufficient to merit binding a non-party to a  
contract it did not agree to is not supported by decisional law from the Supreme  
Court, the Third Circuit, or this District. Case law from Third Circuit and the  
District of New Jersey demonstrates that a high bar is set in order to allow the

1 cannot show that its claims arise out of ATG's incidental contacts with New Jersey,  
 2 MaxLite cannot satisfy the second prong of the minimum contacts analysis and the  
 3 Court should not exercise special jurisdiction over ATG.  
 4

5  
 6 c. It Would Be Unreasonable To Exercise Specific  
 7  
 8 Jurisdiction Over ATG In New Jersey

9 While MaxLite cannot meet its burden to demonstrate ATG has the requisite  
 10 minimum contacts with New Jersey, the reasonableness inquiry further establishes  
 11 that this Court should not exercise specific jurisdiction. The weaker the plaintiff's  
 12 showing as to the first two prongs of the minimum contacts test, the less a  
 13 defendant need show as to unreasonableness to defeat jurisdiction. *See Burger*  
 14 *King*, 471 U.S. at 477. Courts commonly state that a determination of whether it is  
 15 reasonable to exercise personal jurisdiction depends on whether requiring the  
 16 nonresident defendant to defend a suit in a forum state comports with "fair play and  
 17 substantial justice." *See World-Wide Volkswagen*, 444 U.S. at 292. This requires  
 18 courts to consider the following factors: (i) the burden on the defendant; (ii) the  
 19  
 20  
 21  
 22

23  
 24 enforcement of a contractual clause against a non-signatory party. The Third  
 25 Circuit has rejected more expansive decisions from other Circuits and has clarified  
 26 the limited circumstances under which the drastic imposition on a party who has  
 27 neither bargained for, nor consented to, a provision in a contract is proper. *See*  
 28 *Dayhoff*, 86 F.3d at 1296. This court should similarly reject the adoption of an  
 analysis that has never been adopted by either the District of New Jersey or the  
 Third Circuit.

1 forum state's interest in adjudicating the dispute; (iii) the plaintiff's interest in  
2 obtaining convenient and effective relief; (iv) the interstate judicial system's  
3 interest in efficient resolution of controversies; and (v) the shared interest of the  
4 several states in furthering fundamental substantive social policies. *World-Wide*  
5 *Volkswagen*, 444 U.S. at 292.  
6

7  
8 Subjecting ATG to suit in New Jersey, a forum for which it has not actively  
9 reached out to, would not "comport with 'fair play and substantial justice.'" *Burger*  
10 *King*, 471 U.S. at 476 (quoting *Int'l Shoe Company v. Washington*, 326 U.S. 310,  
11 320 (1945)). Requiring ATG to defend this suit in New Jersey would place an  
12 inordinately high burden on ATG, especially when compared to the burden on  
13 MaxLite to defend in the Central District of California. ATG operates entirely from  
14 the West Coast of the United States and lacks contacts with the State of New  
15 Jersey. ATG and its employees do not regularly travel to New Jersey, and in fact,  
16 ATG has "almost no presence in the North East." (Kim Decl., ¶ 15.) It would be  
17 unduly burdensome to require ATG to defend a suit across the country, particularly  
18 when MaxLite maintains a bi-coastal presence, including a primary business office  
19 within the jurisdiction of the Central District of California. (Cai Decl., ¶¶ 13, 14.)  
20 Additionally, two of the three Individual Defendants lived in California, and the  
21 other Individual Defendant maintains significant contacts with California.  
22  
23  
24  
25  
26

27 In addition, the witnesses and evidence expected to be called on in this matter  
28 are all located in California. All of ATG's employees and business records are

1 located in California, and all of the MaxLite employees that might serve as  
 2 witnesses in this case either reside in California, or make regular trips to California  
 3 for business. Further, as indicated by the Individual Defendants in their  
 4 Declarations, the majority of MaxLite's records as related to this matter and the  
 5 Individual Defendants' employment with MaxLite are located in California as  
 6 well.  
 7  
 8

9 The sum of all of these facts shows that this Court's exercise of jurisdiction  
 10 over ATG in this forum would not comport with fair play and substantial justice.  
 11 As demonstrated above, the only forum with the requisite minimum contacts for all  
 12 of the parties to this suit is the Central District of California. Accordingly, ATG  
 13 respectfully requests that this Court not exercise specific jurisdiction and dismiss  
 14 the Amended Complaint for lack of personal jurisdiction.  
 15  
 16  
 17  
 18

19 **B. Alternatively, The Court Should Transfer This Case To The**  
 20 **Central District Of California**

21 Even if venue and jurisdiction were otherwise proper, 28 U.S.C. §§ 1404(a)  
 22 and 1406(a) authorize this Court to transfer the case to the Central District of  
 23 California if doing so serves justice. Section 1404(a) states, in relevant part: "[for  
 24 the convenience of parties and witnesses, in the interest of justice, a district court  
 25 may transfer any civil action to any other district or division where it might have  
 26 been brought." 28 U.S.C. § 1404(a). Likewise, section 1406(a) provides that:  
 27  
 28

1 “[t]he district court of a district in which is filed a case laying venue in the wrong  
2 division or district shall dismiss, or if it be in the interest of justice, transfer such  
3 case to any district or division in which it could have been brought.” 28 U.S.C. §  
4 1406(a). “[T]he purpose of [section 1404(a)] is to prevent the waste ‘of time,  
5 energy and money’ and ‘to protect litigants, witnesses and the public against  
6 unnecessary inconvenience and expense[.]’” *Van Dusen v. Barrack*, 376 U.S. 612,  
7 616 (1964) (superseded by statute on other grounds) (internal citation omitted).  
8 Here, it is not a matter of preference, but rather one of justice, in that MaxLite  
9 should not be allowed to harass ATG by haling it into court across the country in  
10 New Jersey, a forum which bears no relation to the alleged claims.  
11

12  
13 In determining whether a transfer is appropriate, courts examine factors that  
14 relate to both the private interests of the parties and witnesses as well as the  
15 interests of the public. *See Rappoport v. Steven Spielberg, Inc.*, 16 F. Supp. 2d 481,  
16 499 (D.N.J. 1998) (explaining that “the contentions of the plaintiff and the relevant  
17 private and public interests must be considered and balanced” when evaluating a  
18 motion to transfer). Also, the moving party must show that the proposed alternate  
19 forum is not only adequate but also more convenient than the present forum. *Ricoh*  
20 *Co. v. Honeywell, Inc.*, 817 F. Supp. 473, 480 (D.N.J. 1993). As set forth below, a  
21 transfer to the Central District of California would be appropriate.  
22  
23  
24  
25  
26  
27  
28

1                   **1. This Lawsuit Could Have Been Brought In The Central**  
 2                   **District Of California**

3  
 4           To meet its burden, a defendant seeking transfer must establish that an  
 5 adequate alternative forum exists for the dispute. *Rappoport*, 16 F. Supp. 2d at 499.  
 6 “Ordinarily, this requirement will be satisfied when the defendant is ‘amenable to  
 7 process’ in the other jurisdiction,” unless “the remedy offered by the other forum is  
 8 clearly unsatisfactory.” *Id.* (internal citation omitted).

9  
 10           Here, all of the parties are properly subject to personal jurisdiction of the  
 11 Central District of California. MaxLite’s West Coast office is located within the  
 12 Central District of California’s jurisdiction. ATG principal place of business is  
 13 located in the Central District of California. Steedly and Galleher were or are  
 14 residents in the Central District of California. Kim is also subject to the jurisdiction  
 15 of the California courts as “all of his work” for ATG—and much of his work for  
 16 MaxLite “has been directed to the California region.” (Kim Decl., ¶ 16.) Further,  
 17 Galleher, Kim, and Steedly have all provided sworn declarations conceding that  
 18 “California is the appropriate forum for this dispute.” (*Id.*, ¶ 19; Galleher Decl., ¶  
 19 15; Steedly Decl., ¶ 21.) Accordingly, jurisdiction over all parties in this matter is  
 20 proper in the Central District of California.

21  
 22           In addition, the California Action—concerning the same parties and subject  
 23 matter as the New Jersey Action—is already pending in the Central District of  
 24 California. The California Action was initiated by the Defendants in California

1 State Court, seeking a judicial declaration of their rights under the non-competition  
 2 provisions in the Employee Agreements in light of California Business and  
 3 Professions Code section 16600 and California's strong public policy against the  
 4 enforcement, on its citizens, of post-termination covenants not to compete.  
 5 MaxLite later removed the California Action to the Central District of California  
 6 based on diversity jurisdiction.  
 7  
 8

9 Because there is no question that the Central District of California has  
 10 jurisdiction over the parties to this case, it serves as an adequate alternative forum  
 11 for this dispute.  
 12  
 13

## 14 **2. Private Interest Factors Warrant Transfer To The Central** 15 **District Of California** 16

17 In determining the propriety of a section 1404(a) transfer, there is a  
 18 presumption in favor of the plaintiff's choice of forum. However, the plaintiff's  
 19 choice of forum is not conclusive—it "is simply a preference; it is not a right."  
 20 *Ricoh Co. v. Honeywell, Inc.*, 817 F. Supp. 473 at 480 (D.N.J. 1993). In situations  
 21 where the choice of forum by a plaintiff has little connection with the operative  
 22 facts of the lawsuit, the plaintiff's forum deference is "curbed." *Rappoport*, 16 F.  
 23 Supp. 2d at 500; *see Newcomb v. Daniels, Saltz, Mongeluzzi, & Barrett*, 847 F.  
 24 Supp. 1244, 1246 (D.N.J. 1994) ("when the central facts of a lawsuit occur outside  
 25 the forum state, a plaintiff's selection of that forum is entitled to less deference."").  
 26  
 27  
 28

1 More critical to the private interest evaluation is the court's consideration of  
2 "the convenience of the available districts with regard to the sources of proof,  
3 namely the witnesses and documentary evidence." *Rappoport*, 16 F. Supp. 2d at  
4 499. As mentioned above, here, the factor relating to the availability of witnesses  
5 weighs heavily in favor of transferring the case to the Central District of California.  
6  
7 ATG and its principals are all located within California; Steedly and Galleher were  
8 California residents; and Kim has asserted that California is the appropriate forum  
9 to resolve this dispute. (Kim Decl., ¶19.) MaxLite's West Coast office is within  
10 the Central District of California, and the majority of non-party witnesses that will  
11 be expected to testify in this case consist of many of the employees that worked  
12 with Steedly and Galleher at that West Coast office. (Galleher Decl., ¶¶ 19, 22;  
13 Steedly Decl., ¶ 25; Cai Decl., ¶ 14.) Indeed, in support of its preliminary  
14 injunction filing in this case, MaxLite submitted the declarations of three MaxLite  
15 employees—Jay Rodriquez, Jay Lee, and Todd Kim—all of which work at  
16 MaxLite's West Coast office and live in California.<sup>14</sup> (Doc. Nos. 5-3, 5-4, 5-5.)  
17  
18 Further, transferring the lawsuit to the Central District of California would not be  
19 an undue burden for any potential witness of MaxLite's New Jersey employees as  
20 each of them regularly travels to MaxLite's West Coast office as part of the  
21  
22  
23  
24  
25

---

26 <sup>14</sup> In addition to its submission of the three California witness declarations, MaxLite  
27 also submitted a declaration from a potential witness living in Massachusetts. (See  
28 Doc. No. 5-6.) It is noteworthy that MaxLite did not identify or submit declarations  
of any potential witnesses located in New Jersey.



1 ordinary course and scope of their employment. (Galleher Decl., ¶¶ 19-20; Steedly  
2 Decl., ¶¶ 22-23.)

3  
4 Similarly, the factors relating to the ease of access to sources of proof weigh  
5 heavily in favor transferring the case to the Central District of California. This case  
6 is expected to be document intensive and involves allegations of tortious  
7 interference with contracts as well as the theft of certain confidential and  
8 proprietary information, including “customer lists, price lists, recent research and  
9 technology development...” (*See, e.g.,* Am. Compl., ¶¶ 80-88.) Taking MaxLite’s  
10 allegations at face value, the proprietary materials, including any reasonably related  
11 items and materials, are likely either in the possession of ATG in California or the  
12 Individual Defendants in California or Georgia. In any event, the items and  
13 materials are in the jurisdictional reach of the Central District of California.  
14 Alternatively, because none of the Individual Defendants had worked at MaxLite’s  
15 East Coast office for some time before their employment at MaxLite terminated, it  
16 is not reasonable to expect that a large volume of relevant materials are located at  
17 the East Coast office. Also relevant are MaxLite’s increasing connections to the  
18 State of California, including its holding of its 2015 annual meeting in California.  
19 (Galleher Decl., ¶ 21.) All of these facts support a transfer of the case to the  
20 Central District of California.  
21  
22  
23  
24  
25  
26  
27  
28

1 Because the witnesses and materials are either in, or have substantial  
 2 connection to California, the private interest factors weigh heavily in favor of  
 3 transfer to the Central District of California.  
 4

5  
 6 **3. Public Interests Factors Warrant Transfer To The Central**  
 7 **District Of California**  
 8

9 The public interest factors relevant to a determination of the propriety of  
 10 transfer include:  
 11

12 [T]he administrative difficulties flowing from court  
 13 congestion; the “local interest in having localized  
 14 controversies decided at home;” the interest in having a  
 15 trial of a diversity case in a forum that is at home with the  
 16 law that must govern the action; the avoidance of  
 17 unnecessary problems and conflicts of laws or the  
 18 application of foreign law; and the unfairness of  
 19 burdening citizens in an unrelated forum with jury duty.  
 20 *Rappoport*, 16 F. Supp. 2d at 500 (quoting *Lony v. E. I.*  
 21 *Du Pont de Nemours & Co.*, 886 F.2d 628, 640 (3d Cir.  
 22 1989)).  
 23  
 24  
 25  
 26  
 27  
 28

1 Here, the crux of MaxLite's Amended Complaint—and the only issue currently  
2 pending in the California Action—concerns MaxLite's attempt to enforce the non-  
3 compete provisions in each of the Employee Agreements by enjoining the  
4 Individual Defendants from working for ATG or any other competitor of MaxLite.  
5 As stated above, California has a strong interest in protecting its citizens from  
6 restrictive covenants of this nature. California Business and Professions Code  
7 section 16600 provides that “every contract by which anyone is restrained from  
8 engaging in a lawful profession, trade, or business of any kind is to that extent  
9 void.” The California legislature has found that this type of contractual restriction  
10 on California residents is of great importance to California, not equally matched by  
11 New Jersey. An important public interest factor is the desire to have the case tried  
12 before judges familiar with the applicable law. *Hudson United Bank v. Chase*  
13 *Manhattan Bank, NA*, 832 F. Supp. 881, 888 (D.N.J. 1993). Because California has  
14 a strong interest in protecting its citizens from these types of restrictive covenants,  
15 the public interest factor weighs in favor of transferring the case to the Central  
16 District of California.

17 Public interest also favors transfer to California because of the relative  
18 disparity between the parties that cannot be ignored. The Individual Defendants are  
19 individuals that are currently forced to defend themselves from their former  
20 employer, a large, bi-coastal corporation, in the employer's state of incorporation.  
21  
22  
23  
24  
25  
26  
27  
28

1 However, because MaxLite makes its home in both New Jersey and California,  
2 there is no inconvenience to MaxLite in having to litigate the case in California.  
3

4 Both private interest and public interest factors weigh in favor of a California  
5 forum. Accordingly, if the New Jersey Action is not dismissed, then the case  
6 should be transferred and consolidated with the action in the Central District of  
7 California.  
8

9  
10 **V. CONCLUSION**  
11

12 For the foregoing reasons, ATG respectfully requests that the Court dismiss  
13 the Verified Complaint or, in the alternative, transfer the action to the Central  
14 District of California.  
15

16 Dated: April 8, 2016

BRODY AND ASSOCIATES, LLC

17  
18 By: /s/

19 ALEXANDER FRIEDMAN  
20 Attorney for Defendant  
ATG ELECTRONICS, INC.  
21  
22  
23  
24  
25  
26  
27  
28